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testify in his own behalf, and the prosecution comments upon such failure to the jury, such comments constitute reversible error.

Prosecution has no right whatever to refer to the defendant, as to why he did not clear up the affair. *People v. Doyle*, 12 N. Y. 836. No language shall be used by the prosecution to give to the jury the impression that since the defendant did not testify, his guilt is established. *Wilson v. U. S.*, 149 U. S. 60. And the state cannot refer indirectly to the fact that the defendant did not take the stand, for it may cause in the minds of the jurors a presumption of guilt. *State v. Moxley*, 102 Mo. 374. *Austin v. State*, 102 Ill. 261. *Dawson v. State*, 24 S. W., 414.

CRIMINAL LAW—LIMITING ARGUMENT OF COUNSEL—DISCRETION OF COURT. PEOPLE V. FERNANDEZ, 87 PAC. 1112 (CAL.). *Held*, that an order of the court, limiting the time of the argument of counsel to one and three-fourth hours to each side, was an abuse of discretion, requiring a reversal, on it appearing that the counsel for defendant objected thereto, and showed that he could not complete his argument within the time limited.

The constitutional provision guarantying to an accused the right to be heard by himself or counsel, does not deprive the court of the discretionary power to limit the argument of defendant's counsel, to a certain length of time. *Peagler v. State*, 110 Ala. 11. The limitation is within the discretion of the trial court. *People v. Kelly*, 94 N. Y. 526. With this discretion the appellate court will not interfere unless it clearly appears from the record that the rights of the prisoner were prejudiced. *State v. Shores*, 31 W. Va. 491. What shall be an unreasonable limit depends upon the circumstances of the case, its complexity or simplicity, the amount and character of the testimony, the number of witnesses and time consumed in hearing the case. *12 Cyc. 569.* The rule does not apply to arguments on motions and questions arising during the trial. *State v. Jones*, 117 N. C. 768. The courts of Montana, contrary to the general rule hold that in fixing in advance, the exact time needed cannot be correctly determined, and if the court so fixes there is error. *State v. Tighe*, 27 Mont. 327.

CRIMINAL LAW—PLEA IN BAR—EXISTENCE OF COURT—STATE V. HALL, 55 S. E. 806 (N. C.).—*Held*, an alleged plea to the jurisdiction of the court in a criminal case, alleging that the court was not lawfully constituted because the governor was out of the state at the time he directed the holding of the term, and signed the judge's commission, was a nullity, since the court could not pass on its own existence as a court.

Jurisdiction is the power to hear and determine a cause, the authority by which judicial officers take cognizance of and decide causes, *U. S. v. Arredondo*, 31 U. S. 691. The institution of a suit in a court that has no jurisdiction is null. *Mora v. Kuzae*, 21 La. Ann. 754. The proper course is to dismiss the action and not direct a verdict for the defendant, as that would be an exercise of jurisdiction and not a disclaimer thereof. *Clark v. Car.* 45 Ill. App. 469. The doctrine of a *de facto* officer does not apply even though one is in possession of an office and exercising its functions with silent public acquiescence, though wrongfully in possession, is an officer *de facto* and his acts binding, *Ellis v. Deaf and Dumb Asylum*, 68 N. C. 423; for there cannot be a *de facto* officer without a *de jure* office. *Willard v. Pike*, 59 Vt. 202.

DEATH-ACTION GROUNDS AND MEASURE OF DAMAGES.—WILMONT V. MCPADDEN, 65 ATL. 157 (CONN.).—In an action for the death of a child, *Held*, that

plaintiff, if entitled to recover at all, may recover on the same grounds damages measured by the same rule as if the action had been brought by decedent in his lifetime.

Where a parent sues for damages resulting from the death of a minor child, evidence of the value of the child's services until it attained its majority, is admissible, though the recovery is not necessarily limited to the value of such services. *Pierce v. Conners*, 20 Col. 178. Where damages are claimed for the death of a child incapable of earning anything, or rendering service of any value, the value of its probable future service to the parent during its minority is a matter of conjecture, and may be determined by the jury without the testimony of witnesses. *Little Rock Ry. Co. v. Barker and Wife*, 39 Ark. 491. Evidence that the father required the services of his little child in order to maintain his household, was competent upon the question of damages. In this case the father recovered damages for death of seven-year old daughter. *Pressman v. Mooney*, 5 App. Hun., 121 (N. Y.).

DIVORCE—DEFENSE—IMPLIED CONNIVANCE.—DELANEY V. DELANEY, 65 ALT. 217 (N. J.).—The plaintiff introduced his friend to the defendant and in the friend's presence charged her with adultery; subsequently by his acts and omissions, the plaintiff exposed his wife to the temptation of adultery with said friend and then alleging adultery to have occurred brought suit for divorce. *Held*, For a single act of adultery by a wife, a divorce will not be granted to a husband, who either connived at such act, or, in legal contemplation, consented to it. Gummere C. J., and Pitney, Swayze, Reed, Vroom and Green, J.J., *dissenting*.

The absence of due precaution may amount to criminal negligence on the part of the husband where the wife previous to marriage was seduced by her husband, and after marriage warnings in regard to the wife's conduct, calculated to excite his vigilance were given and no steps taken by him in consequence. *Dillon v. Dillon*, 3 Curt. Eccl. 86. A wife may plead the fact of cohabitation when single, with the husband, in order to show a want of proper vigilance on his part over her subsequent moral conduct. *Graves v. Graves*, 3 Curt. Eccl. 235. Where husband and wife by mutual consent separated after marriage the husband was deemed guilty of willful neglect conducing to his wife's adultery. *Hawkins v. Hawkins*, 54 L. J. P. and Adm. 94. A husband who seduces his wife before marriage, and after marriage sees her in a situation of temptation and does nothing to rescue her, and she yields, will be understood as having consented to her adultery. *Cane v. Cane*, 39 N. J. Eq. 140. If a husband knows of his wife's weakness, he is called upon to exercise peculiar vigilance and if he sees what a reasonable man could not see without alarm, and makes no effort to avert the danger, he must be supposed to see and mean the result. *Hedden v. Hedden*, 21 N. J. Eq. 61.

DIVORCE—DESERTION.—FOOTE V. FOOTE, 65 ATL. 205 (N. J.). Where a husband separated from his wife with her consent which was later withdrawn, and he made no proffers to resume marital relations. *Held*, to constitute desertion it is not necessary that the intent should have been formed at the time the party left home, but it is sufficient if he afterwards determines to desert, and persists in such determination—Pitney, Swayge, and Green, JJ., *dissenting*.

Separation and intention to abandon must concur in order to constitute a ground for divorce. But they need not be synchronous. *Pinkard v. Pink-*